

United States Court of Appeals  
Fifth Circuit

**FILED**

**April 21, 2004**

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-41286  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GERARDO MENDOZA-AGUILAR, also known as Gerardo  
Aguilar-Guzman,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. M-03-CR-391-1  
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Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:\*

Gerardo Mendoza-Aguilar ("Mendoza") appeals his guilty-plea conviction for illegal re-entry following deportation. Mendoza argues that 8 U.S.C. § 1326(b) is unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Mendoza argues that, after Apprendi, it is apparent that a majority of the Supreme Court now feels that Almendarez-Torres v. United States, 523 U.S. 224 (1998), was incorrectly decided. He acknowledges

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 03-41286

-2-

that his argument is foreclosed by circuit precedent, but he raises this issue to preserve it for possible review by the Supreme Court. Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; see also United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). Therefore, Mendoza's argument is foreclosed.

AFFIRMED.